

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARUCH APPELDORFER, :
Plaintiff, : ORDER TO AMEND
-against- : 13 Civ. 1591 (LAP)
VERIFACTS, INC., :
Defendant. :
-----X

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff, appearing *pro se*, brings this action alleging that Defendant willfully violated the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”) and state law. By order dated March 27, 2013, the Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”). For the following reasons, the Court directs Plaintiff to file an amended complaint within sixty days of the date of this order.

STANDARD OF REVIEW

The Court has the authority to screen *sua sponte* an IFP complaint at any time and must dismiss the complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). While the law mandates dismissal on any of these grounds, district courts “remain obligated to construe a *pro se* complaint liberally.” *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). Thus, *pro se* complaints should be read with “special solicitude” and should be interpreted to raise the “strongest [claims] that they suggest.” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted). Nonetheless, a *pro se* complaint must provide a defendant with fair notice of what the claims are and each of the grounds upon which they rest, *see Valenzuela v. Riverbay Corp.*, 06 Civ. 903, 2007 WL 414487, at *2 (S.D.N.Y. Jan. 31, 2007), and *pro se* filings must plausibly assert that the plaintiff is entitled to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 669 (2009).

BACKGROUND

Plaintiff alleges that he obtained his consumer credit reports from the three credit reporting agencies and discovered that Defendant Verifacts, Inc., an entity unfamiliar to him, had obtained his credit report without his consent from Experian on May 7, 2012, and from Trans Union on May 8, 2012. (Compl. ¶¶ 9-10.) Plaintiff mailed a letter to Defendant on November 20, 2012, requesting “a general or specific certification as to what permissible purpose” it had to obtain Plaintiff’s credit reports, but Defendant failed to respond. (*Id.* ¶¶ 13-14.) On February 14, 2013, Plaintiff mailed a “Notice of Pending Lawsuit” to Defendant “in an effort to mitigate damages and spare judicial resources.” (*Id.* ¶ 15.) Plaintiff later filed this action asserting that Defendant willfully or negligently violated § 1681b of the FCRA by obtaining his credit report without a legitimate permissible purpose resulting in his “loss of credit, loss of the ability to purchase and benefit from credit, credit denials and lowering of credit lines” and “egregious violation” of his right to privacy. (*Id.* ¶¶ 41-44.)

DISCUSSION

A. Section 1681b of the FCRA

Section 1681b of the FCRA protects consumer privacy by limiting access to consumer credit reports. To state a claim under § 1681b, a plaintiff must allege both that the defendant used or obtained the plaintiff’s credit report for an impermissible purpose, *see* 15 U.S.C. § 1681b(f); *Perl v. Am. Express*, No. 11 Civ. 7374 (KBF), 2012 WL 178333, at 2 (S.D.N.Y. Jan. 19, 2012) (citing cases), and that the violation was willful or negligent, *see* 15 U.S.C. §§ 1681n, 1681o; *Perl*, 2012 WL 178333, at 2.

Here, although Plaintiff alleges that Defendant accessed his credit report for an impermissible purpose, he fails to allege specific facts to satisfy the state of mind element, that is, that the violation was willful or negligent. *See Farkas v. RJM Acquisitions Funding, Inc.*, No. 12 Civ. 735 (ER), 2012 WL 1948643, at *2 (S.D.N.Y. May 29, 2012); *Perl*, No. 11 Civ. 7374, 2012 WL 178333, at *2. Plaintiff does not allege facts suggesting that Defendant “committed a knowing or reckless violation of the FCRA” by obtaining his credit report with the awareness that it had no

permissible purpose. *Perl*, 2012 WL 178333, at *3. Plaintiff's claim that Defendant willfully violated the FCRA is conclusory, failing to provide "enough factual content" to support a reasonable inference that the alleged violation was willful. *Perl*, 2012 WL 178333, at *2-3. Plaintiff's complaint is also bereft of facts suggesting negligence. *See Casela v. Equifax Credit Info. Servs.*, 56 F.3d 469, 473 (2d Cir. 1995); *King v. MTA Bridges & Tunnels*, 933 F. Supp. 220, 224-25 (E.D.N.Y. 1996). Because Plaintiff fails to allege facts suggesting that Defendant was more than "innocently mistaken" in obtaining his credit report, he fails to adequately allege the state of mind element necessary for a FCRA claim. *Farkas*, 2012 WL 1948643, at *3.

B. Leave to Amend

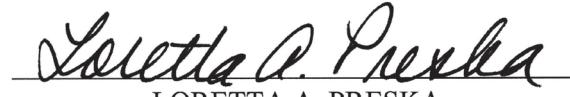
Plaintiff is granted leave to amend his complaint to detail his claims under the FCRA. Should Plaintiff submit an amended complaint, he must allege facts from which the Court can draw a reasonable inference that Defendant willfully or negligently violated the FCRA by accessing his credit report. Plaintiff's amended complaint will completely replace, not supplement, his original complaint.

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket and to mail a copy of this order to Plaintiff. Plaintiff is directed to file an amended complaint containing the information specified above. The amended complaint must be submitted to this Court's *Pro Se* Office within sixty days of the date of this order, be captioned as an "**AMENDED COMPLAINT**," and bear the same docket number as this order. An amended complaint form is attached to this order, which Plaintiff should complete as specified above. No summons will issue at this time. Once submitted, the amended complaint will be reviewed for substantive sufficiency, and then, if proper, the case will be reassigned to a district judge in accordance with the procedures of the Clerk's Office. If the case is reassigned, a copy of this order will be served with the summons and amended complaint. If Plaintiff fails to comply within the time allowed, and cannot show good cause to excuse such failure, the complaint will be dismissed.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppededge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED:



LORETTA A. PRESKA
Chief United States District Judge

Dated: April 23, 2013
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____ Civ. _____ (_____)

(In the space above enter the full name(s) of the plaintiff(s).)

**AMENDED
COMPLAINT**

-against-

Jury Trial: Yes No
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name _____
Street Address _____
County, City _____
State & Zip Code _____
Telephone Number _____

B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____
Defendant No. 2	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____
Defendant No. 3	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____
Defendant No. 4	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
	Telephone Number _____

II. Basis for Jurisdiction:

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? (*check all that apply*)

Federal Questions Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? _____

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship _____

Defendant(s) state(s) of citizenship _____

III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? _____

B. What date and approximate time did the events giving rise to your claim(s) occur? _____

C. Facts: _____

What happened to you?

Who did what?

Was anyone else involved?

Who else saw what happened?

IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. _____

V. Relief:

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking, and the basis for such compensation.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this ____ day of _____, 20____.

Signature of Plaintiff

Mailing Address

Telephone Number

Fax Number (*if you have one*)

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.

For Prisoners:

I declare under penalty of perjury that on this _____ day of _____, 20_____, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Inmate Number